



Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

RIN 0551-AA82

Dairy Tariff-Rate Import Quota Licensing Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Request for public comment on the Dairy Tariff-Rate Import Quota Licensing Program.

DATES: We will consider comments that we receive by [insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: We invite you to submit comments as requested in this notice. In your comment, include the Regulation Identifier Number (RIN) and volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail, hand delivery, or courier: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Room 5526, 1400

Independence Avenue, SW, Washington DC 20250-1021, (202) 720-9439;
fax (202) 720-0876; Abdelsalam.El-Farra@fas.usda.gov.

Comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Agricultural Marketing Specialist, Sugar and Dairy Branch, Import Programs and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720-9439; fax (202) 720-0876; Abdelsalam.El-Farra@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing regulation codified at 7 CFR 6.20-6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person, as defined in the regulation, to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation. Licenses are issued on a calendar year basis, and each license authorizes the licensee to import a specified quantity and type of dairy article from a specified country of origin.

TRQs replaced Section 22 import quotas for dairy products on January 1, 1995, as a result of the implementation by the United States of Uruguay Round Agreement on Agriculture. Under these TRQs, a low tariff rate, commonly referred to as the in-quota rate, applies to imports up to a specified quantity. A higher tariff rate, commonly referred to as the over-quota rate, applies to any imports in excess of that amount. High-tier tariff rates were reduced by 15 percent over the 6 years following Uruguay Round Agreement implementation in 1995, while quantities subject to low-tier rates were increased gradually over that same period. TRQ rates and quantities vary by product. For dairy products subject to TRQs, an import license issued by USDA is generally required to bring in items at the in-quota tariff rate. No license is required to import products at the over-quota tariff rate.

USDA issues three types of licenses: historical, nonhistorical (lottery), and designated. For all three license types, the current regulation provides that persons must apply every year between September 1 and October 15.

- 1) Historical licenses originated in 1950s and are reissued each year only to importers who originally qualified by importing the product during representative base periods. If an importer with a historical license meets all requirements, the license will be issued to the same importer for the following year.
- 2) Nonhistorical (lottery) licenses are available each year to any qualified applicant. Lottery licenses were first issued in the late 1960s, and expanded when the United State implemented the Uruguay Round Agreement. Applicants for the lottery

licenses have no guarantee that they will receive the same license every year, or that they will receive any license in any given year.

- 3) Designated licenses are issued to importers nominated by a foreign government or entity to which the United States has granted the right to designate an allocation. The licenses are then issued by USDA to the designated importer, so long as the designated importer has qualified for that year.

2012 Dairy Import License Amounts (kilograms)

	Historical	Nonhistorical (Lottery)	Designated	Total
NON-CHEESE ARTICLES	4,737,167	17,127,614	0	21,864,781
CHEESE ARTICLES	63,170,778	24,729,865	47,685,145	135,585,788
TOTAL	67,907,945	41,857,479	47,685,145	157,450,569

Historical and designated licensees may apply for lottery licenses, subject to certain limitations if they are affiliated or associated with another licensee holding a license for that same item from the same country of origin. Licensees may fail to qualify for a license for a specific item from a specific country in the following year if they do not meet certain requirements. Licensees must (i) apply for the license each year, (ii) pay an annual fee, and (iii) have imported at least 85 percent of the final license amount from the previous year. To avoid ineligibility due to the 85 percent rule, licensees may surrender

up to 100 percent of the license, but must import 85 percent of any quantity not surrendered.

Section 6.25(b)(i) of the Dairy Tariff-Rate Import Quota Licensing Program regulation currently provides, beginning with the 2016 quota year, an additional import requirement which applies only to historical licensees, that any historical licensee who surrenders more than 50 percent of the license amount for the same item from the same country during at least three of the most recent five years will be issued a license thereafter, in an amount equal to the average amount imported under that license for those five quota years.

The only non-technical modifications to the program since 1996 have been temporary suspensions of the provision in section 6.25(b) providing for the reduction in the license amount. Citing changed market conditions, including reduced export subsidies from the European Union, USDA temporarily suspended the provision three times: for five years from 1998-2002, for two years from 2009 to 2010, and most recently for five years from 2011 to 2015.

Upon promulgating the Dairy Tariff-Rate Import Quota Licensing Program regulation in 1996, the Secretary of Agriculture determined that this regulation resulted to the fullest extent practicable in a fair and equitable allocation of the right to import dairy products subject to licensing. The regulation also maximized the utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have

affected or may be affecting the trade in the products. Regarding section 6.25(b), in light of the small number of licenses available to new entrants or others who wish to increase imports of a given article, USDA determined that it was sound public policy to reallocate license amounts that were consistently not being used and the 6.25(b) reduction provision would increase the amount available in the non-historical pool, while still giving historical licensees a fair opportunity to demonstrate that they are using their licenses.

Many stakeholders, particularly importers holding historical licenses, believe that section 6.25(b)(i) no longer serves its original purpose and have requested its elimination. They point out that in the last decade, for those items with low fill-rates, the non-historical license fill-rates are no higher than the historical license fill-rates. Stakeholders have also proposed as an alternative to eliminating section 6.25(b)(i), that the standard against which historical license fill-rates are measured should not be 50 percent, but rather the industry overall average fill-rate for each year. Under this type of rule, a historical license for a particular item would only be reduced if the licensee imported less than 50 percent of the industry's average imports of that item for three out of the most recent five years.

The U.S. dairy market has changed a great deal since the Dairy Tariff-Rate Import Quota Licensing Program regulation was promulgated in 1996. In the intervening years there have been significant advances in technology and telecommunications, and certain processes such as issuing new or reallocated licenses can now be managed in less time. Stakeholders have requested changes to some of the timelines and deadlines in the

current regulation. For example, some would prefer that reallocation be done prior to October 1 of each year. Permitting reallocation earlier in the year would provide more time to identify supplies and arrange shipping and handling for entry into U.S. Customs territory before the quota year ends on December 31.

Some stakeholders have requested a review of the method for calculating the annual fee, which is currently levied per license, but could be levied in other ways such as per kilogram. A small number of importers control a large percentage of the quota allocations. These import licenses enable the licensee to import certain dairy products at the lower in-quota tariff-rate and, under the current licensing program, much of this value likely accrues to these licensed importers, due to the extent of control they have over imported dairy products subject to licensing. Given the length of time since the initial historical allocations were made almost 60 years ago, suggestions have been made that a more equitable license allocation system could be implemented.

USDA is requesting public comment on all of the issues mentioned above, or on any other part of the regulation at 7 CFR Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing. In particular, comments are invited on these questions:

- 1) Does the historical and nonhistorical license system still serve a purpose?
- 2) Should any provisions of the current regulation be modified in light of significant advances in technology and telecommunications?

- 3) Should methods be developed for issuing licenses that would increase competition among importers?
- 4) Should licenses be auctioned or issued on another basis?
- 5) Should section 6.25(b)(i) regarding historical license reductions be eliminated, revised, or indefinitely suspended?
- 6) Should the basis upon which license fees are assessed be changed from the current flat-fee per license?
- 7) Should the deadlines for the surrender and reallocation of licenses in section 6.26 be changed to allow earlier reallocations?

_____, January 31, 2013 _____

Suzanne E. Heinen
Administrator
Foreign Agricultural Service

Date